IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

MACA.No. 1331 of 2005()

OPMV.1162/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LTD.,
CUDDALORE NOW REPRESENTED BY ITS ADMINISTRATIVE
OFFICER, REGIONAL OFFICE, METRO PALACE, KOCHI-18.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.JACOB MATHEW P.

RESPONDENTS: PETITIONER:

SEKHARAN, S/O. KURUMBAN,
PERUMBILIKUDY HOUSE, MORACKALA, KUMARAPURAM P.O.
(NO RELIEFS ARE CLAIMED AGAINST RESPONDENTS 1 & 2
IN THE ORIGINAL PETITION AND HENCE THEY ARE NOT
MADE PARTIES IN THIS APPEAL).

BY ADV. SRI.T.K.KOSHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON 23.2.2007 PASSED THE FOLLOWING:

P.R.RAMAN & S.SIRI JAGAN, JJ.

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M.A.C.A. No.1331 of 2005

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Dated this the day of February, 2007

J U D G M E N T

Siri Jagan, J.:

The Oriental Insurance Company Limited, the third respondent in O.P.(M.V).No.1162/1996 before the Motor Accidents Claims Tribunal, Perumbavoor, has filed this appeal against the award in the said O.P. challenging the finding regarding negligence on the part of the driver of the vehicle which was insured with them. The respondent is the claimant in that O.P. Lorry No.TN.31/5279 which was insured with the appellant Insurance Company collided with the motor cycle bearing registration No.KL.7F/4421 driven by the respondent herein causing the accident which resulted in injuries to the respondent. The respondent filed O.P(MV) in which the Tribunal came to the finding that the driver of the lorry

was negligent and awarded a sum of Rs.92,620/- to the respondent herein as compensation for injuries suffered by him on account of the accident. The Insurance Company is challenging that part of the award by which the driver of the lorry was found to be wholly negligent, which caused the accident resulting in injuries to the respondent-claimant.

2. The case of the appellant is that the Tribunal went wrong in finding that the driver of the lorry was negligent in the matter. Since the owner and the driver did not choose to contest the matter, the insurance company obtained permission of the Tribunal under Section 170 of the Motor Vehicles Act to contest the claim on all defences available to the owner and the driver of the vehicle. It is pursuant to such permission obtained that they have become entitled to file this appeal against the findings of the Tribunal on the question of negligence. Their contention is that in order to prove that there was no negligence on the part of the driver of the lorry, they had examined

the RW1, who was the head constable who prepared the scene mahazar to prove the contents of the scene mahazar which would support their contention on negligence. Based on the said scene mahazar they would contend that the scene mahazar itself would prove beyond doubt that it was the respondent who was negligent in driving the motor cycle going by the scene of occurrence detailed in Ext.A2 scene mahazar. They would further submit that at least the scene mahazar would show that the respondent also contributed to the accident by his negligence, if not fully.

3. The learned counsel for the respondent would vehemently oppose the contentions of the appellant. He would submit that the scene of occurrence mentioned in Ext.A2 scene mahazar may not be the correct position of the vehicles at the time of occurrence of the accident. The scene of occurrence as described in the scene mahazar has been drawn up long after the accident and since the motor cycle was dragged by the lorry to some

distance, the scene mahazar as such, cannot be relied upon to find negligence on the part of the respondent.

4. We have considered the rival contentions in detail.

5. The only evidence on the side of the respondent to prove negligence on the part of the lorry driver is of the respondent himself as PW1. That itself may not be wholly reliable since his would only be an interested version of the incident. As such, his evidence has to be tested in the light of scene mahazar prepared by the police in the criminal case charged, although against the driver of the lorry. A copy of the scene mahazar has been made available to us by the counsel for the appellant as also the F.I. Statement of the respondent before the police, which is Ext.A4 before the Tribunal. The scene mahazar shows that the width of the road was 6.03 mtrs. The scene of occurrence as mentioned in the scene mahazar is at 5.04 meters from the western tar end of the road.

Admittedly, the respondent was driving from south to north along the Kadayirippu-Kolencherry road and the lorry was coming from the opposite side. Therefore, the eastern side is clearly the wrong side of the motor cycle driven by the respondent. In fact the scene of occurrence is almost two meters into the wrong side of the motor cycle. Further, both headlights of the lorry have been smashed and the bumper of the lorry was found dented. The motor cycle was found lying under the lorry close to the left front tyre of the lorry. There is nowhere any mention that the motor cycle was dragged by the lorry and the scene mahazar does not mention any marks on the road which would even remotely suggest that the motor cycle has in fact been dragged by the lorry to some distance as claimed by the respondent-claimant. Going by the scene mahazar it is clear that the accident occurred on the wrong side of the motor cycle and that being so, we are not satisfied that the finding of the Tribunal that the driver of the

lorry alone was negligent in driving the lorry to cause the accident is correct. The evidence on record would certainly suggest negligence on the part of the driver of the motor cycle, viz., the claimant-respondent herein. However, we are not inclined to find that the motor cycle driver alone was negligent in the matter. We feel that both the drivers were equally negligent in driving their respective vehicles and that such negligence caused the accident. In the above circumstances, we are inclined to apportion the negligence in the proportion of 50:50 between the driver of the lorry and the driver of the motor cycle.

6. The result of the above findings is that since the respondent-claimant was negligent to the extent of 50 per cent, the appellant insurance company would be liable to pay only 50 per cent of the amount awarded by the Tribunal. The Tribunal had awarded an amount of Rs.92,620/-. 50 per cent of this amount would come to Rs.46,310/-. We direct the appellant herein to pay to the respondent

herein the said amount of Rs.46,310/- with 9 per cent interest from the date of the petition till the date of realisation. We note that in I.A.No.2429/2005, an interim stay of implementation of the award had been granted on condition that the appellant deposits 50 per cent of the awarded amount. If the appellant has deposited that amount, the same would be adjusted against the amount payable as above. Since the Tribunal had allowed the respondent to withdraw only Rs.25,000/- from the total amount awarded, naturally proportionately he would be entitled to withdraw only Rs.12,500/- from the said amount. The balance would be deposited in a bank as directed by the Tribunal in the impugned award.

The M.A.C.A. is allowed as above, but without any order as to costs.

Sd/-
P.R.RAMAN, JUDGE
Sd/-
sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.